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IN THE  
**Supreme Court of the United States**  
October Term, 1983

SHERMAN BLOCK, *et al.*,

*Petitioners,*

v.

DENNIS RUTHERFORD, *et al.*,

*Respondents.*

On Writ of Certiorari to the United States  
Court of Appeals for the Ninth Circuit

**MOTION FOR LEAVE TO FILE BRIEF *AMICUS*  
*CURIAE* AND BRIEF OF *AMICUS CURIAE*  
NEW YORK CITY BOARD OF CORRECTION  
IN BEHALF OF RESPONDENTS**

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MOTION FOR LEAVE TO FILE  
BRIEF AMICUS CURIAE

The New York City Board of  
Correction ("the Board") is an agency of  
City government whose members are  
appointed by the Mayor of the City of New  
York, the City Council, and the presiding  
justices of the intermediate appellate  
courts within the City of New York.<sup>1</sup> Its  
mandates include 1) regular inspection  
and oversight of the operations of the  
Department of Corrections ("the  
Department");<sup>2</sup> 2) promulgation of  
"minimum standards for the care, custody,  
correction, treatment, supervision, and

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<sup>1</sup> New York, N.Y., New York City  
Charter and Administrative Code  
§626(a) (1981).

<sup>2</sup> New York, N.Y., New York City  
Charter and Administrative Code  
§626(c) (1981).

discipline" of inmates in City custody;<sup>3</sup>  
and 3) the hearing of grievances of A)  
persons in the custody of the Department  
and B) employees of the Department.<sup>4</sup>

The City of New York, like the  
County of Los Angeles, bears the burden  
of balancing fiscal, security,  
constitutional and public policy concerns  
as it meets its obligation safely to  
detain large numbers of pretrial  
detainees and short term sentenced  
inmates in a large, urban setting.

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<sup>3</sup> New York, N.Y., New York City  
Charter and Administrative Code  
§626(e) (1981).

<sup>4</sup> New York, N.Y., New York City  
Charter and Administrative Code  
§626(f) (1981). The Board of Correction  
is an entity of the City of New York. It  
functions as an independent oversight and  
review body which is not subject to the  
direct control of the City, its Mayor or  
the Commissioner of Correction. Neither  
(Footnote cont'd)

In the City of New York, as in the County of Los Angeles, this difficult balancing process has been affected by Federal court intervention at the behest of classes of inmates.

Any determination by this Court which addresses the proper reach of Federal constitutional standards for confinement of pretrial detainees will necessarily affect the dynamic within which our correctional system, and those of other cities and counties across the country, must set priorities and allocate resources.

For these reasons, the Board, which has long and intensive experience with the implementation and operation of

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(Footnote cont'd)  
the City, the Mayor or the Department has taken a position in this litigation.

contact visiting, and which must oversee and regulate a complex, urban correctional system within the context of Federal constitutional standards, respectfully requests leave to present its views concerning the appropriateness of the decision below requiring contact visitation for certain longer term, low risk inmates. The Board will not review the legal issues so thoroughly and ably addressed by the parties. It seeks rather to elucidate issues essential to judging whether the absolute prohibition of barrier free visitation is punitive or justified by legitimate non-punitive interests by reference to its unusual expertise and experience.

The Board offers no submission concerning the remaining issue before the Court.

WHEREFORE, the Board respectfully moves that the attached brief amicus curiae be accepted and filed with the Court.<sup>5</sup>

Respectfully submitted,

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<sup>5</sup> Respondents have given their consent to the filing of this brief in a letter which is enclosed herewith.

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BRIEF OF AMICUS CURIAE BOARD  
OF CORRECTION OF THE CITY OF  
NEW YORK IN BEHALF OF RESPONDENTS

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### STATEMENT OF INTEREST

The Board of Correction of the City of New York ("the Board") was established in 1957 and is required regularly to inspect all detention and correctional facilities operated by the City of New York through its Department of Correction ("the Department"); to promulgate minimum standards for secure and appropriate confinement of persons confined to the custody of the Department and to hear grievances of both inmates and Department employees.<sup>1</sup> The Board, an independent agency consisting of appointed Members and a full-time professional staff, has the additional

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<sup>1</sup> New York, N.Y., New York City Charter and Administrative Code §§626 (a), (c), (e) and (f) (1981).

duty of regular communication with the Mayor and the Council of the City of New York concerning Department performance <sup>2</sup> and the power to enforce its designated authority.<sup>3</sup> In these respects, it shares responsibility with the Mayor and the Department for assuring safe confinement of all inmates and the maintenance of non-punitive conditions for pretrial detainees.<sup>4</sup>

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<sup>2</sup> New York, N.Y., New York City Charter and Administrative Code §626 (d) (1981).

<sup>3</sup> New York, N.Y., New York City Charter and Administrative Code §626 (d) (1981).

<sup>4</sup> The Department presently confines nearly 10,000 men, women and adolescents in fifteen facilities throughout the City of New York. Approximately seventy per cent of these inmates are awaiting trial on criminal charges.

The views and experience of the Board may be useful in the resolution of the issues before the Court in three respects.

First, in 1978 the Board promulgated minimum standards for the operation of New York City correction facilities, one of which addresses contact visitation. The concept of minimum standards requires emphasis. The duty of the Board is to represent the broader interests of the citizens of New York rather than to serve as an advocate for any particular interest or group. Moreover, it has the power and duty, imposed by the Charter of the City of New York,<sup>5</sup> to promulgate standards by which

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<sup>5</sup> "The board may institute proceedings in a court of appropriate  
(Footnote cont'd)

the Department is legally bound and to see to their enforcement. The Board's standard setting process is not, then, merely advisory or an exercise in development of ideal detention and correctional policy. Its standards are minimum requirements, developed through an extended process of weighing fiscal concerns, the requisites of secure confinement, State and Federal constitutional constraints and the policy issues raised by the quality of the environment in which inmates are confined

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(Footnote cont'd)  
jurisdiction to enforce its subpoena power and other authority pursuant to this section." New York, N.Y., New York City Charter and Administrative Code §626 (g) (1981). While the Board has had no occasion to test its authority to enforce minimum standards, the important consideration in this context is that the Board regarded its standard setting as a process by which binding regulations were being established.

and in which correction officers must work.

This court has observed that the recommendations of standard setting bodies "may be instructive in certain cases...[but] do not establish constitutional minima", Bell v. Wolfish, 441 U.S. 520, 544, n. 27 (1978), see also, Rhodes v. Chapman, 452 U.S. 337, 348, n. 13 (1980). We believe that the process and product of the Board's effort to devise minimum and enforceable standards is particularly instructive in the context of this litigation.

Second, for nearly five years the Board has closely monitored the operation of a contact visitation program much more permissive than that required by the District Court with respect to the Los Angeles County Central Jail. It has



observed the implementation and expansion of contact visiting in facilities ranging in population from less than one hundred to several thousand; in facilities located in the urban centers of four of the five boroughs of the City of New York and in the massive correction complex on Rikers Island; and in facilities which range, in terms of condition and design quality, from the large, widely criticized, fifty year old House of Detention for Men on Rikers Island to the recently renovated, state of the art Manhattan House of Detention.

No two jail systems are alike, and the needs and capabilities of each must be determined individually. Nonetheless, the experiences of other, comparably complex detention systems in managing visitation are of some relevance in judging whether the courts below

properly determined that the denial of barrier free visits to every pretrial detainee in the Los Angeles County Central Jail was an unconstitutionally excessive response to security and administrative concerns.

Finally, detention conditions are determined by a complex dynamic in which the influence of Federal constitutional law figures importantly. The Board is a local entity with oversight responsibility for an unusually large and difficult detention system. It is required simultaneously to respond to public safety needs; to contend with the understandable problems inherent in attracting resources to jail and prison systems and to guard against the everpresent risk that conditions of pretrial confinement will deteriorate to an unconscionable level as resources are

drained to more attractive causes. The system for which the Board is responsible has been the subject of much litigation. It is the Board's view that both overintrusiveness on the part of Federal courts and excessive deference to local administrative judgments and preferences can have devastating effects upon the ability of any locality to provide minimally decent conditions of confinement for detention populations. The Board, therefore, has an urgent interest in the manner in which the actions of the courts below are judged here. For that judgment will explicate the role of Federal constitutional law in establishing minimum conditions of pretrial confinement and will, therefore, affect the dynamic within which the Board and its counterparts attempt to maintain safe and humane systems of detention.

As the Board has no standard governing cell searches, it makes no submission on that issue.

#### SUMMARY OF ARGUMENT

The expertise of the Board, developed in part through the process of promulgation of minimum standards for visitation in New York City facilities, and the experience of the Board in monitoring the implementation of an extensive program of barrier free visitation in a system as complex as that of Los Angeles County indicate that the courts below did not misjudge the punitive character of closed booth visitation or the excessiveness of the absolute prohibition of barrier free visitation in the Los Angeles County Central Jail.

## ARGUMENT

THE FACTS WHICH FORMED THE BASIS OF THE BOARD'S REQUIREMENT THAT BARRIER FREE VISITATION BE PERMITTED WITHIN THE NEW YORK CITY CORRECTION SYSTEM AND THE BOARD'S EXPERIENCES IN MONITORING COMPLIANCE WITH THAT STANDARD SUGGEST THAT THE ABSOLUTE DENIAL OF CONTACT VISITATION IN THE LOS ANGELES COUNTY CENTRAL JAIL IS AN UNREASONABLE, EXAGGERATED RESPONSE TO LEGITIMATE SECURITY CONCERNS.

### A. The Board's Establishment of Minimum Visitation Standards for the City of New York.

As we have indicated, development of the Board's minimum standards required reconciliation of public safety, fiscal, administrative and constitutional concerns. Promulgation of the standards was preceded by more than a year of research, circulation of drafts for review and comment by pertinent City agencies, negotiating sessions with the Department and public hearings.

Substantial redrafting occurred as a result of consultation with the Department, the Mayor and the Office of Management and Budget regarding the feasibility, cost and implementation date of each standard.

In considering whether and to what extent barrier free visitation should be permitted, the Board was, of course, guided by existing Federal precedent by which contact visitation had been held to be required for at least some suitably classified pretrial detainees in certain New York City facilities.<sup>6</sup>

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<sup>6</sup> See Rhem v. Malcolm, 371 F. Supp. 594, 602-603 (S.D.N.Y. 1974), aff'd, 507 F.2d 333, 338 (2d Cir. 1974); Rhem v. Malcolm, 527 F.2d 1041 (2d Cir. 1975); Ambrose v. Malcolm, 440 F.Supp. 51 (S.D.N.Y. 1977); Forts v. Malcolm, 426 (Footnote cont'd)

The research process described above revealed virtual unanimity among correction specialists in disapproving the routine maintenance of physical barriers between detainees and their visitors<sup>7</sup> and established that barrier free visitation was available to most sentenced inmates across the country.<sup>8</sup>

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(Footnote cont'd)

F.Supp. 464 (S.D.N.Y. 1977); Detainees of the Brooklyn House of Detention v. Malcolm, 421 F.Supp. 382 (E.D.N.Y. 1976).

<sup>7</sup> See AMERICAN CORRECTIONAL ASSOCIATION, MANUAL OF STANDARDS 48-50, 543-544 (1966), NATIONAL ADVISORY COMMISSION ON CRIMINAL JUSTICE STANDARDS AND GOALS, REPORT ON CORRECTIONS 68 (1973), NATIONAL SHERIFF'S ASSOCIATION, A HANDBOOK ON INMATES' LEGAL RIGHTS 42 (1974).

<sup>8</sup> A survey of 168 correctional institutions revealed that 167 provided contact visits, N. E. SCHAFER, A DESCRIPTIVE STUDY OF POLICIES AND PRACTICES RELATED TO THE VISITING OF PRISONERS IN CORRECTIONAL INSTITUTIONS 56-57 (1977).



Contact visitation was (and is) available to sentenced inmates in the State of New York by administrative regulation enacted pursuant the Correction Law.<sup>9</sup>

While these factors were instructive, they could not resolve the issue for the Board. Direct experience with institutional visitation with and without the use of physical barriers was crucial to the Board's determination as to whether the use of such barriers could be justified for detainee and short term sentenced populations.

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<sup>9</sup> New York State Commission of Correction, Minimum Standards for Local Correctional Facilities, Section 7008.2 (b) 1976. The extensive contact visiting program in New York State prisons was thought to have reduced tension and improved morale throughout the system. Minimum Standards Subcommittee, 1977; Hearing Before the New York City Board of Correction (June 30, 1977) (testimony of (Footnote cont'd)

Direct observation of visitation with the use of physical barriers is perhaps necessary to full comprehension of its stigmatizing and dehumanizing effects.<sup>10</sup> The impact upon inmate and visitor of the presence of the physical barrier is profound. It not only prevents the physical contact which is so important to meaningful communication between parents and children and between spouses, it calls forth the implication that the inmate is a pariah who, despite confinement in a locked, regimented, closely guarded facility, cannot safely be released from an

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(Footnote cont'd)  
the Honorable Mario Cuomo, Secretary of State, State of New York, Transcript 34-35.

<sup>10</sup> Representative photographs of booth and barrier free visitation areas are attached as Appendices A-D.

isolated, sealed space in the presence of family and other authorized visitors.

Aspects of the psychological impact of closed booth visits had been revealed by the testimony of experts in early Federal cases concerning the conditions of confinement in New York City facilities. Dr. Karl Menninger testified as follows:

"[T]he one great thing that...[the detainee] can look forward to is the reestablishment, contact, with this world. . . . These have all been broken for this man. Now, this makes for a dangerous state of instability, because without these contacts he can't live psychologically. All this is interposed into this establishment of this contact, a pane of dirty glass and a dim --

in my experience often a  
nonfunctional, nonfunctioning  
telephone. . . .

Rhem v. Malcolm, supra, 371 F. Supp at  
602. Dr. Augustus Kinzel, former staff  
psychiatrist at the U.S. Medical Center  
at Springfield, Missouri, pictured  
non-contact visiting as frustrating,  
". . . the carrot on the stick that is  
held in front of the person who can't  
quite attain it." Id. at 603. The  
Department's Director of Mental Health,  
testifying in the same litigation, "told  
of psychological damage to a prisoner who  
returned from booth visits 'even worse  
than when he went down because of the  
separation'." Id. at 603.

The Board was also mindful of  
the importance of visitation in main-  
taining emotional stability, particularly  
among younger detainees. In a study

published subsequent to promulgation of its standards, the Board reported that over twenty-five per cent of suicides in the jails were by young men who had not received a visit.<sup>11</sup> It was clear to the Board that the conditions of booth visits served to deter friends and family from providing the frequent contacts so important to the emotional stability of detainee population.

In the hearing process, representatives of the families of inmates gave further evidence of the alienating effects of booth visitation:

The physical presence is most important, to both adults and children. To see facial

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<sup>11</sup> NEW YORK CITY BOARD OF CORRECTION, STUDY OF SUICIDES: 1978 - 83 11-12 (1983).

expressions, to touch hands, to sit a child on one's lap can do so much to break down barriers to communication. It can ease the tensions on both sides and relieve all from the vague imaginings that so subtly sneak into a person's mind when distance forbids actual touch and sight.<sup>12</sup>

Experts in child development stress the positive role that regular visitation can play in maintaining the family bonds so important to healthy emotional development of a child. They have concluded that institutional rules that severely limit the duration, frequency and circumstances of visitation are not in the child's best interest.

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<sup>12</sup> Submission to the New York City of Board of Correction by Prison Families Anonymous, Inc., June, 1977.

Visitation at least weekly in surroundings that permit normal interaction and physical contact is recommended. On Prisons and Parenting: Preserving the Tie that Binds, 87 YALE L.J. 1408, 1416 - 25 (1978).

In consultation with the Department, the Mayor and City budget officers, the Board weighed these factors against public safety and fiscal concerns. Its deliberations were informed by reports of the successes and problems involved in compliance with preexisting court orders requiring limited contact visits.<sup>13</sup>

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<sup>13</sup> The earliest court-ordered contact visiting sometimes took place in makeshift, temporary facilities under less than ideal circumstances. See testimony of former New York City Warden Gaston at the trial of this case, RT (Footnote cont'd)



The Board concluded that the additional stigma and stress associated with booth visitation could not be justified by security or fiscal concerns in the case of all pretrial detainees and short term sentenced inmates. The Board also concluded that it was essential that the Department be permitted to deny barrier free visitation in cases in which it determined that open visitation would

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(Footnote cont'd)  
(11/8/78) 4284-4372. The Board resolved not to implement its contact visitation standard until adequate resources and facilities were available. Id. at 4365. Moreover, the overall record established during the early period of limited, contact visitation did not justify its prohibition. The warden who administered one of the earliest large-scale contact visitation programs in New York City testified as follows in hearings before the Board:

I think...[contact visits are] much better. I've seen this with the contact visits. When I walk into the booth visit, which is a  
(Footnote cont'd)

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(Footnote cont'd)

closed visit, I always am greeted with a high degree of complaints and general unhappiness. I go into the contact visit room, inmates are waiting unpleasantly long times but yet not complaining. One thing that I like is to see a child come in and the father be able to look at his own child in an open setting.

I like to do things right. I like to stick with the basics. I think that the contact visits was a demonstration of that. We were given enough time and we were given a reasonable amount of detail and assistance, manpower and we were able to bring about a very satisfactory temporary arrangement.

Preliminary Hearing on Minimum Standards, 1976: Hearing Before the New York City Board of Correction (June 21, 1976) (testimony of Warden Louis Grecco Transcript 57-58).

Similarly, the Correction Officers' Benevolent Association, while urging the overriding importance of safety and security in New York City jails, publicly stated its support of contact visitation.

Minimum Standards Subcommittee, 1977: Hearing Before the New York City Board of Correction (June 30, 1977) (statement of the Correction Officers' Benevolent Association, Transcript 206).

constitute a threat to the safety or security of the institution.<sup>14</sup>

B. Extensive Experience with Contact Visitation Programs in New York City Suggests No Justification for Their Outright Denial to Detainee Populations.

The Board and its staff have closely monitored the implementation of the minimum standard regarding barrier free visitation. Hundreds of thousands of contact visits have been conducted yearly in New York City jails pursuant to the Board standard. The number of such visits has more than doubled since promulgation of the standard in 1978.

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<sup>14</sup> See New York City Board of Correction, Minimum Standards for New York City Correctional Facilities, Section 10 - Visiting (1978), reproduced in full as Appendix E of this brief. In particular, see Sections 10.1, 10.4, 10.6, 10.8.

The Board has observed that the desire to avoid booth visits is so strong that few inmates or visitors would willingly risk the penalty of cancellation of barrier free visits by violating institutional rules and regulations with respect to visits. Thus, visiting room confrontations, incidents and misconduct are rare. Review of all Unusual Incident Reports relating to visiting in Fiscal Year 1983 reveals that 99.95% of the visits were conducted without incident.

Although the Board has received requests from the Department to be relieved of obligations imposed by other minimum standards, it has never received a request for a substantive variance from its contact visitation standard. Contact visiting was initially vigorously opposed

in litigation in the early seventies,<sup>15</sup> but it was accepted in concept by the Department in the late seventies when Board standards were being debated. Today, contact visiting has been incorporated into Department operations system wide. With the opening of a new contact visiting area in the detention ward at Bellevue Hospital this spring, all Department facilities will routinely provide contact visits. Barrier free visiting will also be standard visit practice in all new facilities to be constructed under the Mayor's recently

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<sup>15</sup> The Department originally opposed contact visiting because, like the jail administrators in Los Angeles, it feared an increase in escapes, contraband, and hostage-taking as well as changes in physical plant, staffing and procedures. See Rhem v. Malcolm, supra 371 F. Supp. at 604-606 for discussion of Department objections.

announced plan to add over 3,000 new beds to the New York City system by 1986. While all Department facilities retain some non-contact visiting booths, these booths are rarely utilized.<sup>16</sup>

Although it is impossible to account for the many variables which might be related to increases and decreases in the number of escapes from correction facilities, it is worth noting that the number of escapes has decreased since the introduction of contact visiting. This fact is more notable in view of the substantial increase in the

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<sup>16</sup> In the first six months of Fiscal Year 1984, only 1.3% of all visits in the New York City correctional system were booth visits. Excluding visits which were conducted in hospital wards which did not have barrier free visitation facilities throughout the period in question reduces the percentage of booth visits to one half of one per cent.

inmate population during the same period.<sup>17</sup> Similarly, while contraband remains a problem in New York City's (and in most) jails, it enters through many sources. The use of magnetometers, careful pre and post visit search procedures, personal property lockers for visitors and visit uniforms for inmates have proved effective in controlling the flow of dangerous contraband into the jails.

The Board does not assert that New York City's approach to barrier free visitation should be universally adopted. It recognizes that each jail is different and that differences in staffing, physical plant and inmate population must be taken into account in the development

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<sup>17</sup> See chart next page.



Population, Contact Visits and Escapes New York City  
Department of Correction 1978 - 1983

<u>Fiscal Year</u>	<u>Average Daily Population</u>	<u>Number of Contact Visits</u>	<u>Number of Escapes Attempted/Successful</u>	
1978	6993	159,960	73	22
1979	6749	215,400	27	7
1980	7033	266,500	22	7
1981	8541	324,456	9	9
1982	9279	310,935	16	15*
1983	9948	338,972	5	4

\*Includes 9 inmates who escaped from the Court Holding Area  
in one incident.

of programs and procedures. However, five years of successful experience with barrier free visitation in a large metropolitan area with thousands of inmates housed in both modern and antiquated facilities strongly suggests that, in the case of inmates who have been convicted of no crime, any absolute prohibition of barrier free visitation -- regardless of the nature of the charges, the amount of bail set, the inmate's security classification or the length of confinement -- is simply unsupportable.

It is important that local officials not be burdened by unwarranted interference concerning security designations which affect eligibility for contact visits and appropriate security and administrative measures concerning the implementation of barrier free visitation. These concerns are the

province of local government. The order of the district court below, as we understand it, has not trampled upon these important local prerogatives. It has simply assured that pretrial confinement will not unnecessarily entail punitive, stigmatizing restraints which are potentially disruptive of emotional stability and family bonds.

#### CONCLUSION

The judgment of the Court of Appeals should be affirmed insofar as it upholds the requirement that the Sheriff of Los Angeles County permit contact visits for some pretrial detainees at the Los Angeles County Central Jail.

Respectfully submitted,

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Visit booths in old Manhattan House of Detention (Tombs)

Appendix A



One of two visit booths in newly renovated  
Manhattan House of Detention.

Appendix B



Contact visiting in new Manhattan House of Detention.

Appendix C





Barrier free visits in House of Detention for Men on  
Rikers Island.

Appendix D

## **APPENDIX E**

### **Part 10 - Visiting**

#### **Section**

- 10.1 Policy**
- 10.2 Visiting and Waiting Areas**
- 10.3 Visiting Schedule**
- 10.4 Initial Visit**
- 10.5 Visitor Identification  
and Registration**
- 10.6 Contact Visits**
- 10.7 Visiting Security and  
Supervision**
- 10.8 Limiting of Visiting  
Rights**
- 10.9 Effective Date**

#### **Section 10.1 Policy**

**Prisoners are entitled to receive personal visits of sufficient length and number.**

## Section 10.2 Visiting and Waiting Areas

(a) By September 1, 1978, a visiting area of sufficient size to meet the requirements of this Part shall be established and maintained in each institution.

(b) The visiting area shall be designed so as to allow physical contact between prisoners and their visitors as required by Section 10.6.

(c) The Department shall make every effort to minimize the waiting time prior to a visit. Visitors shall not be required to wait outside an institution unless adequate shelter is provided and the requirements of Section 10.2(d) are met.

(d) All waiting and visiting areas shall provide for at least minimal comforts for visitors, including but not limited to:

(i) sufficient seats for all visitors;

(ii) access to bathroom facilities and drinking water throughout the waiting and visiting periods.

(iii) by September 1, 1978, access to vending machines for beverages and foodstuffs at some point during the waiting or visiting period; and

(iv) access to a Spanish-speaking employee or volunteer at some point during the waiting or visiting period. All visiting rules, regulations and hours shall be clearly posted in English and Spanish in the waiting and visiting areas at each institution.

e. The Department shall make every effort to utilize outdoor areas for visits during the warm weather months.

### Section 10.3 Visiting Schedule

(a) Visiting hours may be varied to fit the schedules of individual institutions but must meet the following minimum requirements for detainees:

(i) Monday through Friday.  
Visiting shall be permitted on at least three days for at least five consecutive hours between 9 a.m. and 5 p.m. Visiting shall be permitted on at least two evenings for at least three consecutive hours between 6 p.m. and 10 p.m.

(ii) Saturday and Sunday.  
Visiting shall be permitted on both days for at least five consecutive hours between 9 a.m. and 8 p.m.

(b) Visiting hours may be varied to fit the schedules of individual institutions but must meet the following minimum requirements for sentenced prisoners:

(i) Monday through Friday.  
Visiting shall be permitted on at least one evening for at least three consecutive hours between 6 p.m. and 10 p.m.

(ii) Saturday and Sunday.  
Visiting shall be permitted on both days for at least five consecutive hours between 9 a.m. and 8 p.m.

(c) The visiting schedule of each institution shall be available by contacting either the central office of the Department or the institution.

(d) Visits shall last at least one hour. This time period shall not begin until the prisoner and visitor meet in the visiting room.

(e) Prisoners are entitled to at least two visits per week with at least one on an evening or the weekend, as the prisoner wishes. By September 1, 1978, detainees shall be entitled to at least three visits per week with at least one on an evening or the weekend, as the detainee wishes. Visits by properly identified persons providing services or assistance, including lawyers, doctors, religious advisors, public officials, therapists, counselors and media representatives, shall not count against this number.

(f) There shall be no limit to the number of visits by a particular visitor or category of visitors.

(g) In addition to the minimum number of visits required by subdivisions (a) (b) and (e) of this Section, additional visitation shall be provided in cases involving special necessity, including but not limited to, emergency situations and situations involving lengthy travel time.

(h) Prisoners shall be permitted to visit with at least three visitors at the same time, with the maximum number to be determined by the institution.

(i) Visitors shall be permitted to visit with at least two prisoners at the same time, with the maximum number to be determined by the institution.

(j) If necessitated by lack of space, an institution may limit the total number of persons in any group of visitors and prisoners to four. Such a limitation shall be waived in cases involving special necessity, including but not limited to, emergency situations and situations involving lengthy travel time.

#### Section 10.4 Initial Visit

(a) Each detainee shall be entitled to receive a visit within 24 hours after his or her admission to the institution.

(b) If a visiting period scheduled pursuant to Section 10.3(a) is not available within 24 hours after a detainee's admission, arrangements shall be made to ensure that the initial visit required by this Section is made available.

#### Section 10.5 Visitor Identification and Registration

(a) Consistent with the requirements of this Section, any properly identified person shall, with the prisoner's consent, be permitted to visit the prisoner.

(i) Prior to a visit, a prisoner shall be informed of the identity of the prospective visitor.

(ii) A refusal by a prisoner to meet with a particular visitor shall not affect the prisoner's right to meet with any other visitor during that period, nor the prisoner's right to meet with the refused visitor during subsequent periods.

(b) Each visitor shall be required to enter in the institution visitors log:

- (i) his or her name;
- (ii) his or her address;
- (iii) the date;
- (iv) the time of entry;



(v) the name of the prisoner or prisoners to be visited; and

(vi) the time of exit.

(c) Any prospective visitor who is under 16 years of age shall be required to enter, or have entered for him or her, in the institution visitors log;

(i) the information required in subdivision (b) of this Section;

(ii) his or her age; and

(iii) the name, address, and telephone number of his or her parent or legal guardian.

(d) The visitors log shall be confidential and information contained therein shall not be read by or revealed to non-Department staff except as provided by the City Charter or pursuant to a specific request by a legitimate law enforcement agency. The Department shall maintain a record of all such requests with detailed and complete descriptions.

(e) Prior to visiting a prisoner, a prospective visitor under 16 years of age may be required to be accompanied by a person 18 years of age or older, and to produce oral or written permission from a parent or legal guardian approving such visit.

(f) The Department may adopt alternative procedures for visiting by persons under 16 years of age. Such procedures must be consistent with the policy of Section 10(e), and shall be submitted to the Board for approval.

#### Section 10.6 Contact Visits

Physical contact shall be permitted between every prisoner and all of his or her visitors throughout the visiting period, including holding hands, holding young children, and kissing.

#### Section 10.7 Visiting Security and Supervision

(a) All prisoners, prior and subsequent to each visit, may be searched solely to ensure that they possess no contraband.

(b) All prospective visitors may be searched prior to a visit solely to ensure that they possess no contraband.

(c) Any body search of a prospective visitor made pursuant to subdivision (b) of this Section shall be conducted only through the use of electronic detection devices. Nothing contained herein shall affect any authority possessed by correctional personnel pursuant to statute.

(d) Objects possessed by a prospective visitor, including but not limited to, handbags or packages, may be

searched or checked. Personal effects, including wedding rings and religious medals and clothing, may be worn by visitors during a visit.

(e) Supervision shall be provided during visits solely to ensure that the safety or security of the institution is maintained.

(f) Visits shall not be listened to or monitored unless a lawful warrant is obtained, although visual supervision should be maintained.

#### Section 10.8 Limitation of Visiting Rights

(a) Visiting rights shall not be denied, revoked, limited or interfered with based upon prisoner's or prospective visitor's:

- (i) sex;
- (ii) sexual orientation;
- (iii) race;
- (iv) age, except as otherwise provided in this Part;
- (v) nationality
- (vi) political beliefs;
- (vii) religion
- (viii) criminal record;

(ix) pending criminal or civil case; or

(x) lack of family relationship.

(b) The visiting rights of a prisoner with a particular visitor may be denied, revoked or limited only when it is determined that the exercise of those rights constitutes a serious threat to the safety or security of an institution, provided that visiting rights with a particular visitor may be denied only if revoking the right to contact visits would not suffice to reduce the serious threat.

(i) This determination must be based on specific acts committed by the visitor during a prior visit to an institution that demonstrate his or her threat to the safety and security of an institution, or on specific information received and verified that the visitor plans to engage in acts during the next visit that will be a threat to the safety or security of the institution. Prior to any determination, the visitor must be provided with written notification of the specific charges and the names and statements of the charging parties and be afforded an opportunity to respond. The name of an informant may be withheld if necessary to protect his or her safety.

(c) A prisoner's right to contact visits as provided in Section 10.6 of this Part may be denied, revoked, or

limited only when it is determined that such visits constitute a serious threat to the safety or security of an institution. Should a determination be made to deny, revoke or limit a prisoner's right to contact visits in the usual manner, alternative arrangements for affording the prisoner the requisite number of visits shall be made, including, but not limited to, non-contact visits.

(i) This determination must be based on specific acts committed by the prisoner while in custody under the present charge or sentence that demonstrate his or her threat to the safety and security of an institution, or on specific information received and verified that the prisoner plans to engage in acts during the next visit that will be a threat to the safety or security of the institution. Prior to any determination, the prisoner must be provided with written notification of the specific charges and the names and statements of the charging parties and be afforded an opportunity to respond. The name of an informant may be withheld if necessary to protect his or her safety.

(d) Any determination to deny, revoke or limit a prisoner's visiting rights pursuant to subdivisions (b) and (c) of this Section shall be in writing and shall state the specific facts and reasons underlying such determination. A copy of this determination, including the appeal procedure, shall be sent to the

Board and to any person affected by the determination within 24 hours of the determination.

(e) Any person affected by a determination made pursuant to subdivisions (b) and (c) this Section may appeal such determination to the Board.

(i) The person affected by the determination shall give notice in writing to the Board and to the Department of his or her intent to appeal the determination.

(ii) The Department and any person affected by the determination may submit to the Board for its consideration any relevant material in addition to the written determination.

(iii) The Board or its designate shall issue a written decision upon the appeal within five business days after it has received notice of the requested review.

#### Section 10.9      Effective Date

This Part shall take effect May 1, 1978.

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SHERMAN BLOCK, et al.,

Petitioners

v.

DENNIS RUTHERFORD, et al.,

Respondents.  
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CERTIFICATE OF SERVICE

I, Peggy C. Davis, counsel for amicus curiae Board of Correction of the City of New York, hereby certify that copies of the within Motion for Leave to File a Brief Amicus Curiae and Brief Amicus Curiae in behalf of Respondent were mailed this day, postage prepaid, to counsel for each party to the proceeding and to the Solicitor General of the United States as amicus curiae in behalf of Petitioner, as follows:

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